

### § 3.300

### 38 CFR Ch. I (7–1–08 Edition)

may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in § 3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: 38 U.S.C. 1506)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0101 and 2900–0624)

[44 FR 45936, Aug. 6, 1979, as amended at 60 FR 51922, Oct. 4, 1995; 65 FR 16827, Mar. 30, 2000; 66 FR 56614, Nov. 9, 2001]

#### RATINGS AND EVALUATIONS; BASIC ENTITLEMENT CONSIDERATIONS

### § 3.300 Claims based on the effects of tobacco products.

(a) For claims received by VA after June 9, 1998, a disability or death will not be considered service-connected on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during service. For the purpose of this section, the term "tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(b) The provisions of paragraph (a) of this section do not prohibit service connection if:

(1) The disability or death resulted from a disease or injury that is otherwise shown to have been incurred or aggravated during service. For purposes of this section, "otherwise shown" means that the disability or death can be service-connected on some basis other than the veteran's use of tobacco products during service, or that the disability became manifest or death occurred during service; or

(2) The disability or death resulted from a disease or injury that appeared to the required degree of disability within any applicable presumptive period under §§ 3.307, 3.309, 3.313, or 3.316; or

(3) Secondary service connection is established for ischemic heart disease or other cardiovascular disease under § 3.310(b).

(c) For claims for secondary service connection received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to the veteran's use of tobacco products during service will not be service-connected under § 3.310(a).

(Authority: 38 U.S.C. 501(a), 1103, 1103 note)

[66 FR 18198, Apr. 6, 2001]

### § 3.301 Line of duty and misconduct.

(a) *Line of duty.* Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.

(Authority: 38 U.S.C. 105)

(b) *Willful misconduct.* Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 1521)

(c) *Specific applications; willful misconduct.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1 (m) and (n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

(Authority: 38 U.S.C. 501)

(1) *Venereal disease.* The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having